

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

SMITTY E. HARDING,

Petitioner,

v.

/ /

CIVIL ACTION NO. 1:10CV158
(Judge Keeley)

WILLIAM E. FOX, Warden,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATIONS (DKT. 18),
GRANTING RESPONDENT'S MOTION TO DISMISS (DKT. 14),
DISMISSING 28 U.S.C. § 2254 PETITION AND
DENYING CERTIFICATE OF APPEALABILITY

On May 9, 2011, United States Magistrate Judge James E. Seibert entered a Report and Recommendations ("R&R"), concluding that this petition under 28 U.S.C. § 2254 should be dismissed for lack of jurisdiction, lapse of the statute of limitations, and failure to exhaust state remedies.

The pro se petitioner, Smitty E. Harding ("Harding"), did not file objections despite being warned that his failure to do so would waive any right to appeal or dispute the findings of the R&R. Harding's failure to object similarly relieves the Court of any duty to conduct a de novo review of the R&R. See Thomas v. Arn, 474 U.S. 140, 148-153 (1985); Wells v. Shriners Hospital, 109 F.3d 198, 199-200 (4th Cir. 1997). Finding no error in its reasoning, the Court **ADOPTS** the R&R (dkt. 18) in its entirety, **GRANTS** the Respondent's motion to dismiss (dkt. 14), and **DISMISSES** the

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petition. Finding no issue of constitutional merit upon which reasonable jurists might differ, the Court **DENIES** a certificate of appealability in this matter. See Rule 11(a), Rules Governing Section 2254 and 2255 Cases.

It is so **ORDERED**.

The Court directs the Clerk to remove this case from the active docket, and to transmit copies of this Order to counsel of record and to the pro se petitioner via certified mail, return receipt requested.

Dated: June 27, 2011

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE